

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) 4:19-CR-156-1
)
)
PETER EFTHIMIOU,)
)
)
Defendant,)
)
)
PROSPERITY BANK,)
)
)
)
Garnishee.)

**GOVERNMENT'S RESPONSE TO DEFENDANT'S REQUEST FOR HEARING
AND TRANSFER**

The United States of America, by and through David H. Estes, United States Attorney for the Southern District of Georgia, responds to Defendant Peter Efthimiou's Motion for Hearing and Motion for Transfer (Doc. 53) as follows:

1. Background

Efthimiou was convicted of Conspiracy to Commit Medicare Fraud¹ in June 2020 and sentenced to 3 years of supervised release, \$987,750.00 in restitution, and a special assessment of \$100.00. (Doc. 39.) Upon entry of judgment, a lien in favor of the United States arose against nearly all property Efthimiou owns or may own. See 18 U.S.C. § 3613 (c), (f)

Pursuant to 18 U.S.C. § 3613 and the Federal Debt Collection Procedures Act (“FDCPA”), 28 U.S.C. § 3001 *et seq.*, the United States sought a Writ of Garnishment on December 3, 2021, directed to substantial non-exempt property owned by Efthimiou and in

¹ See 18 U.S.C. §§ 371, 1952(a)(3) & (a)(3)(A)

the custody or control of Prosperity Bank. (Doc. 46.) The Court granted the Government's application on December 16, 2021. (Doc. 47.)

Pursuant to 28 U.S.C. § 3205(c)(3), the United States served the Garnishee with a copy of the Application, Writ of Garnishment, Clerk's Notice of Garnishment, the Order, and a proposed Answer form with instructions for compliance. (Doc. 49.) The United States next served Efthimiou with a copy of the Application, Writ of Garnishment, Clerk's Notice of Garnishment, the Order, and instructions for compliance. *Id.*

On February 2, 2022, the Garnishee filed its Answer indicating substantial non-exempt property of Efthimiou's within the Garnishee's custody or control. (Doc. 52.) Also on February 2, 2022, and without citation to purpose or exemption, Efthimiou filed a request for a hearing. (Doc. 53.) Efthimiou simultaneously requested transfer of venue to the Eastern District of Texas, where Efthimiou was served and resides. *Id.* Efthimiou's requests are timely.

2. Discussion

Efthimiou's request to transfer must be granted, and his request for hearing should be deferred until taken up by the Eastern District of Texas.

The Federal Debt Collection Procedures Act ("FDCPA") provides that "if the debtor so requests, within 20 days after receiving the notice described in section 3101(d) or 3202(b), the action or proceeding in which the writ, order, or judgment was issued shall be transferred to the district court for the district in which the debtor resides." 28 U.S.C. § 3004(b)(2). The 11th Circuit interprets this unambiguously: the district court "must grant" a timely-made transfer request. *United States v. Peters*, 783 F.3d 1361 (11th Cir. 2015).

The government notes that, unlike the debtor in *Peters*, Efthimiou presents no basis for contesting garnishment proceedings against him.² Nevertheless, there appears no room for deliberation: “the verb ‘shall’ in a statute is a command … [that] creates an obligation not subject to judicial discretion.” *Peters*, 783 F. 3d at 1364. The Court must grant Efthimiou’s motion to the extent that this bank garnishment be transferred.³ The Court should reserve ruling on Efthimiou’s motion for a hearing for the Eastern District of Texas.

Respectfully submitted, this 2nd day of February 2022.

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² “Peters contended (1) the property was exempt from levy, and (2) the restitution order was not final, because his criminal appeal was pending.” *United States v. Peters*, 783 F.3d 1361, 1362 (11th Cir. 2015).

³ See also *United States v. Moore*, No. 2:17-MC-3809-WKW-GMB, 2018 WL 1415651, at *1 (M.D. Ala. Mar. 1, 2018), report and recommendation adopted, No. 2:17-MC-3809-WKW, 2018 WL 1413386 (M.D. Ala. Mar. 21, 2018) (“Under the plain language of the FDCPA, [the debtor’s] request requires the court to transfer this case to the district of [the debtor’s] residence.”)

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2022, a copy of the foregoing Government's Response to Defendant's Request for Hearing And Transfer was furnished by CM/ECF electronic transmission to all electronic notice parties on the CM/ECF service list on this case and that a copy was sent, via certified mail, to Peter Efthimiou at his last known address in Sherman, Texas.

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